

ASA to

## 2003 ASSEMBLY BILL 531

September 18, 2003 - Introduced by Representatives WARD, McCORMICK, NISCHKE, TURNER, JENSEN, HUEBSCH, VRAKAS, BERCEAU, LADWIG, STASKUNAS, ALBERS, M. LEHMAN, TOWNS, PLOUFF, HAHN, TAYLOR, GRONEMUS, OTT, JESKEWITZ, GIELOW, MUSSER, HINES, J. FITZGERALD, RICHARDS, COGGS, POCAN and KRUG, cosponsored by Senators KANAVAS, MOORE, STEPP, LEIBHAM, DARLING, ERPENBACH, M. MEYER, ROBSON, HARSDFORF, KEDZIE, BROWN, LASSA, PLALE, JAUCH, WIRCH, HANSEN and ROESSLER. Referred to Committee on Economic Development.

Regent

1 AN ACT *to repeal* 560.37 (3m) (a) 1.; *to renumber* 560.32 (2) (c); *to renumber*  
2 *and amend* 560.32 (2) (b), 560.33 (1) (b), 560.34 (1) (d) and 560.34 (2); *to*  
3 *consolidate, renumber and amend* 560.37 (3m) (a) (intro.) and 2.; *to amend*  
4 71.45 (2) (a) 10., 560.30 (3), 560.30 (10) (d), 560.31 (1), 560.31 (2) (b), 560.33 (1)  
5 (intro.), 560.33 (2), 560.34 (1) (c), 560.34 (1) (e), 560.34 (1m) (b), 560.35 (2)  
6 (intro.), 560.35 (2) (a), 560.35 (2) (c), 560.35 (3), 560.37 (4) and 560.37 (5); and  
7 *to create* 71.47 (7), 71.49 (1) (dm), 560.30 (10) (e), 560.31 (2) (g), 560.32 (2) (b)  
8 2., 560.32 (2) (c) 2., 560.33 (1) (b) 2., 560.34 (1) (d) 2., 560.34 (2) (a) to (k), 560.34  
9 (5), 560.35 (1c) and 560.35 (1r) of the statutes; **relating to:** certified capital  
10 ~~investment limitations, qualified business requirements, creating a certified~~  
11 ~~capital company income and franchise tax credit for insurers, certified capital~~  
12 ~~company office, qualified distributions of certified capital companies, certified~~  
13 ~~capital company net worth, certified capital company investment reporting~~  
14 ~~requirements, treatment of qualified investments that become nonqualified,~~

Companies

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1 ~~permitted nonqualified investments, reviews of certified capital company~~  
2 ~~financial statements,~~ requesting a performance audit, and requiring the  
3 exercise of rule-making authority.

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***Analysis by the Legislative Reference Bureau***

Under current law, the Department of Commerce (department) is authorized to certify investments (certified capital investments) made by investors (certified investors) in companies that have been certified by the department (certified capital companies). A certified capital company in which a certified capital investment is made must then invest the certified capital investment, according to a specified schedule, in a business in this state that fulfills certain requirements, including having no more than 100 employees and a net worth of no more than \$5,000,000 (qualified businesses). The investment in the qualified business must satisfy certain requirements, and the qualified business must agree to comply with certain requirements as a condition of the investment.

If a certified investor is a certain type of insurer, including a life insurer or an out-of-state insurer doing a fire or marine insurance business or a casualty or surety business, the certified investor may claim a tax credit for the certified capital investment against license fees that are based on gross premiums and that are owed to the state instead of income or franchise taxes. The credit must be claimed over a ten-year period, with 10% of the investment used to offset the license fee that is due each year.

This bill makes various changes to the certified capital company program. Significant changes include the following.

***Cap on certified capital investments.***

Current law allows the department to certify no more than \$10,000,000 in certified capital investments per certified investor and no more than \$50,000,000 in total certified capital investments. This bill authorizes the department to certify another \$300,000,000 in certified capital investments and to certify, in certified capital investments per certified investor, up to the greater of \$10,000,000 or 15% of the total certified investments that the department may certify over and above the original \$50,000,000 that the department was authorized to certify. In addition, this bill allows any insurer that is subject to state income or franchise taxes to claim a tax credit for a certified capital investment against the insurer's income or franchise tax liability.

***Reporting requirements***

Current law requires a certified capital company to ensure that each of its investment pools makes qualified investments according to a specified schedule. The schedule depends upon the "investment date," which is the date on which the last certified capital that is part of a particular investment pool was invested in the certified capital company. Under the schedule, a certified capital company must ensure that at least 30% of each investment pool is placed in qualified investments

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within three years after the investment date and that at least 50% of each investment pool is placed in qualified investments within five years after the investment date.

This bill requires a certified capital company, within 30 days after each of these deadlines, to report to the department information necessary to determine whether the certified capital company is in compliance with these requirements. The bill also requires a certified capital company to report certain information to the department within 15 days after making any qualified investment.

Current law requires a certified capital company to file an annual report with the department by January 31 of each year. This bill provides, instead, for a semiannual report that must be filed by January 31 and July 31 of each year.

Currently, a certified capital company must file with the department a copy of its annual audited financial statements within 90 days after the end of the certified capital company's fiscal year. This bill requires a certified capital company to file, along with its financial statements, a listing of the procedures followed by the certified capital company, as prescribed by the department, that relate to the methods of operation and conduct of the business of the certified capital company, to enable the department to determine whether the certified capital company is complying with relevant laws. This listing must be prepared by an independent certified public accountant.

***Distributions***

Current law permits a certified capital company to make a distribution or payment to its equity holders for specified purposes. One such purpose is for a projected increase in federal or state taxes, including penalties and interest on those taxes, of the equity owners if those amounts are related to the certified capital company's ownership, management, or operation. This bill deletes the authority to make such a distribution for the payment of penalties and interest on these taxes. The bill also permits a certified capital company to make a distribution for the payment of reasonable costs associated with applying for qualified federal funding programs, as determined by the department.

***Certification***

Current law requires a person applying for certification as a certified capital company to have a net worth, at the time of application, of at least \$500,000 and at least \$500,000 in cash, cash equivalents, and marketable securities. This bill requires a person to meet these requirements both at the time of application and on the date on which the person is certified. The bill also requires the person to agree to maintain in this state an investment office and staff actively engaged in making investments.

Current law permits a certified capital company to voluntarily decertify in either of two circumstances: 1) At least ten years have passed since the last certified capital investment was made in the certified capital company; or 2) the certified capital company has placed in qualified investments an amount equal to 100% of the certified capital investments it received. This bill deletes the authority to voluntarily decertify as described in item 1.

**ASSEMBLY BILL 531*****Qualified businesses, qualified investments, and nonqualified investments***

Currently, at least 75% of the employees of a qualified business must be employed in this state. This bill provides that, alternatively, at least 75% of the total payroll of the qualified business must be paid to employees who are employed in this state.

Currently, a certified capital company is permitted to request a written opinion from the department that a business in which the certified capital company proposes to invest is a qualified business. This bill requires a certified capital company to obtain such an opinion before making an investment in any business.

Current law requires a qualified business to agree to certain conditions in order to receive an investment from a certified capital company. The qualified business must agree not to use the proceeds from the investment to relocate its operations; not to relocate its headquarters outside of this state as long as the certified capital company holds the investment; to maintain at least 75% of its employees in this state (or, under the bill, to pay at least 75% of its total payroll to employees in this state); and, with certain exceptions, to maintain at least 75% of its employees at work sites that were maintained by the qualified business at the time that the investment was made. This bill specifies the consequences that apply if a certified capital company makes an investment in a qualified business and the qualified business thereafter violates one of these conditions. Under the bill:

1. The violation does not affect the certified capital company's compliance with the deadlines for making qualifying investments.

2. One hundred percent of the amount of each qualified investment is counted toward the certified capital company's compliance with the deadlines for making qualifying investments.

3. If the violation occurs within the first year after the qualified investment was made, no amount of the qualified investment may be counted toward the certified capital company's satisfaction of the percentage requirements that trigger the authority of the certified capital company to make distributions or decertify.

4. If the violation occurs more than one year, but three years or less, after the qualified investment was made, only 25% of the amount of the qualified investment shall be counted toward the certified capital company's satisfaction of the percentage requirements that trigger the authority of the certified capital company to make distributions or decertify.

5. If the violation occurs more than three years, but five years or less, after the qualified investment was made, only 50% of the amount of the qualified investment shall be counted toward the certified capital company's satisfaction of the percentage requirements that trigger the authority of the certified capital company to make distributions or decertify.

6. If the violation occurs more than five years after the qualified investment was made, 90% of the amount of the qualified investment shall be counted toward the certified capital company's satisfaction of the percentage requirements that trigger the authority of the certified capital company to make distributions or decertify.

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The bill, though, permits the department to grant an exception to the requirements under items 3. to 6. above and not reduce the amount of the qualified investment that is counted toward the certified capital company's satisfaction of the applicable percentage requirements, if the qualified business violates the conditions requiring the qualified business to maintain at least 75% of its employees in this state, to pay at least 75% of its total payroll to employees in this state, or to maintain at least 75% of its employees at work sites that were maintained by the qualified business at the time that the investment was made. The department may not grant an exception if the department determines that the qualified business is locating employees at new sites to take advantage of lower wage rates in the areas where those sites are located.

Currently, any certified capital investments in a certified capital company that are not invested in qualified investments may be held or invested as the certified capital company considers appropriate, except that the certified capital company may not invest the funds in an insurance company or an affiliate of an insurance company. This bill provides, instead, that a certified capital company may invest such funds only in the following:

1. Cash that is deposited in a federally insured financial institution.
2. Certificates of deposit in a federally insured financial institution.
3. Investment securities that are obligations of the United States or its agencies or instrumentalities, or that are obligations that are guaranteed fully as to principal and interest by the United States.
4. Debt instruments that are rated at least "AA," "A1," or "P1," or the equivalent, by a nationally recognized credit rating organization.
5. Debt instruments that are issued by, or guaranteed with respect to payment by, an entity whose unsecured indebtedness is rated at least "AA" or the equivalent by a nationally recognized credit rating organization and are not subordinated to other unsecured indebtedness of the issuer or guarantor.
6. Obligations of the state or any political subdivision of the state.
7. Interests in money market funds, the portfolios of which are limited to cash and obligations in which the certified capital company could invest the funds directly.
8. A small business investment company that is approved by the department.
9. Any other investments approved in advance in writing by the department.

***Performance evaluation audit***

This bill requests the Joint Legislative Audit Committee to direct the Legislative Audit Bureau to perform a performance evaluation audit of the certified capital company program.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

***The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:***

1

**SECTION 1.** 71.45 (2) (a) 10. of the statutes is amended to read:

1        71.45 (2) (a) 10. By adding to federal taxable income the amount of credit  
2        computed under s. 71.47 (1dd) to (1dx) and (7) and not passed through by a  
3        partnership, limited liability company, or tax-option corporation that has added that  
4        amount to the partnership's, limited liability company's, or tax-option corporation's  
5        income under s. 71.21 (4) or 71.34 (1) (g) and the amount of credit computed under  
6        s. 71.47 (1), (3), (4), and (5).

7        **SECTION 2.** 71.47 (7) of the statutes is created to read:

8        71.47 (7) CERTIFIED CAPITAL COMPANY CREDIT. (a) In this subsection:

- 9        1. "Certified capital company" has the meaning given in s. 560.30 (2).  
10       2. "Certified capital investment" has the meaning given in s. 560.30 (4).  
11       3. "Investment date" has the meaning given in s. 560.30 (6).  
12       4. "Investment pool" has the meaning given in s. 560.30 (7).  
13       5. "Qualified investment" has the meaning given in s. 560.30 (11).

14       (b) An insurer who makes a certified capital investment may claim as a credit  
15       against the tax imposed under s. 71.43, for 10 years beginning with the year of the  
16       investment, an amount equal to either 10% of that investment or the amount by  
17       which the sum of the insurer's certified capital investments and the insurer's  
18       qualified investments exceeds the insurer's qualified investments in the taxable year  
19       before the insurer first claimed the credit under this section, whichever is less.

20       (c) Section 71.28 (4) (e), (f), (g), and (h), as it applies to the credit under s. 71.28  
21       (4), applies to the credit under this subsection.

22       (d) 1. If a certified capital company is decertified, or an investment pool is  
23       disqualified, under s. 560.37 before the certified capital company fulfills the  
24       investment requirement under s. 560.34 (1m) (a) 1. with respect to the investment  
25       pool, any insurer that has received a credit under this subsection with respect to that

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1 investment pool shall repay that credit to the department of revenue and may not  
2 claim more credit in respect to that investment pool.

3 2. If a certified capital company fulfills the investment requirement under s.  
4 560.34 (1m) (a) 1. with respect to an investment pool but the certified capital  
5 company is decertified, or an investment pool is disqualified, under s. 560.37 before  
6 the certified capital company fulfills the investment requirement under s. 560.34  
7 (1m) (a) 2. for that investment pool, any insurer that has received a credit under this  
8 subsection with respect to that investment pool shall repay all credits that were  
9 claimed for taxable years after the taxable year that includes the 3rd anniversary of  
10 the investment date of the investment pool and may claim no more credits for taxable  
11 years after the taxable year that includes the 3rd anniversary of the investment date  
12 of the investment pool.

13 (e) An insurer may sell a credit under this subsection to another insurer who  
14 is subject to the tax imposed under s. 71.43 if the insurer notifies the commissioner  
15 of insurance and the department of revenue of the sale and includes with such  
16 notifications copies of the transfer documents.

17 **SECTION 3.** 71.49 (1) (dm) of the statutes is created to read:

18 71.49 (1) (dm) Certified capital company credit under s. 71.47 (7).

19 **SECTION 4.** 560.30 (3) of the statutes is amended to read:

20 560.30 (3) "Certified capital company tax credit" means the tax credit under  
21 s. ss. 71.47 (7) and 76.635.

22 **SECTION 5.** 560.30 (10) (d) of the statutes is amended to read:

23 560.30 (10) (d) A projected increase in federal or state taxes, including  
24 excluding penalties and interest on those taxes, of the equity owners of the certified

INSERT  
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## SECTION 5

capital company if those amounts are related to the certified capital company's ownership, management, or operation.

SECTION ~~6~~ 560.30 (10) (e) of the statutes is created to read:

560.30 (10) (e) Reasonable costs associated with applying for qualified federal funding programs, as determined by the department. *renumbered s. 560.31 (1) (a) and*

SECTION ~~7~~ 560.31 (1) of the statutes is amended to read:

*change component*  
560.31 (1) ~~At the time of application and on the date on which the person is certified, the person has a net worth, at the time of application, of at least \$500,000 and has at least \$500,000 in cash, cash equivalents, and marketable securities.~~ (a) The department shall promulgate rules establishing procedures under which a person may apply to become a certified capital company for receiving certified capital investments under s. 560.32 (2) (b) 1. or a certified capital company for receiving certified capital investments under s. 560.32 (2) (b) 2.

*insert 7-14*  
(11) The department shall grant or deny an application for certification under this section within 30 days of the date of application. *(P) (b)* If the department denies certification, the department shall include with the denial a detailed description of the grounds for the refusal, including suggestions for removal of those grounds.

SECTION ~~8~~ 560.31 (2) (b) of the statutes is amended to read:

560.31 (2) (b) The At the time of application and on the date on which the person is certified, the person has a net worth, at the time of application, of at least \$500,000 and has at least \$500,000 in cash, cash equivalents, and marketable securities.

SECTION ~~9~~ 560.31 (2) (g) of the statutes is created to read:

*insert 8-21*  
560.31 (2) (g) The person agrees to maintain in this state an investment office and staff actively engaged in making investments. *until all investment pools have been decertified*

SECTION ~~10~~ 560.32 (2) (b) of the statutes is renumbered 560.32 (2) (b) 1. and amended to read:

560.32 (2) (b) 1. The Prior to the effective date of this subdivision .... [revisor inserts date], the department may certify an investment under this subsection only



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1 if, after the certification, the department will not have certified a total of more than  
2 \$50,000,000 in investments under this subsection.

3 SECTION ~~11~~<sup>#</sup>. 560.32 (2) (b) 2. of the statutes is created to read:

4 560.32 (2) (b) 2. Beginning on the effective date of this subdivision .... [revisor  
5 inserts date], the department shall certify investments for which notices have been  
6 received under par. (a), up to \$300,000,000, excluding any investments certified  
7 under subd. 1.

8 SECTION ~~12~~<sup>#</sup>. 560.32 (2) (c) of the statutes is renumbered 560.32 (2) (c) 1.

9 SECTION ~~13~~<sup>#</sup>. 560.32 (2) (c) 2. of the statutes is created to read:

10 560.32 (2) (c) 2. The department may not certify an investment under par. (b)  
11 2. if, after the certification, the investor, together with all affiliates of the investor,  
12 would have in certified capital investments under par. (b) 2. more than the greater  
13 of \$10,000,000 or 15% of the total amount of investments that the department may  
14 certify under par. (b) 2.

15 SECTION ~~14~~<sup>#</sup>. 560.33 (1) (intro.) of the statutes is amended to read:

16 560.33 (1) QUALIFICATIONS. (intro.) ~~A. Except as provided in sub. (2), a business~~<sup>V</sup>  
17 is a qualified business if ~~all of the following requirements are met,~~ as of the time that  
18 a certified capital company, or any affiliate of the certified capital company, makes  
19 its first investment in the business. investment in the business will further economic  
20 development in this state or all of the following requirements are met:

21 SECTION ~~15~~<sup>#</sup>. 560.33 (1) (b) of the statutes is renumbered 560.33 (1) (b) (intro.)  
22 and amended to read:

23 560.33 (1) (b) (intro.) The business has no more than 100 employees, ~~at and any~~  
24 of the following applies:

25 1. At least 75% of whom those employees are employed in this state.

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SECTION 16. 560.33 (1) (b) 2. of the statutes is created to read:

560.33 (1) (b) 2. At least 75% of the total payroll of the business is paid to employees who are employed in this state. *renumbered 560.33(2)(a)* *provide the department with a description of the proposed investment in the form prescribed by the department.*

SECTION 17. 560.33 (2) of the statutes is amended to read:

560.33 (2) ~~DEPARTMENT OPINIONS AND EXCEPTIONS~~ *(a)* A certified capital company may shall, prior to making an investment in a specific business, ~~request a written opinion from the department that a business in which it proposes to invest is a qualified business.~~ *description* If the department determines that the business meets the requirements under sub. (1), the department shall issue a written opinion stating that the business is a qualified business. *business* Within 15 days of receiving the request, the department shall determine whether the business is a qualified business and, *or the proposed investment is not consistent* if the business is not a qualified business, notify the certified capital company in writing of the determination and the reasons for the determination. *business* If the department fails to so notify the certified capital company within 15 days of receiving the request, the business *and the investment shall be deemed consistent* shall be deemed a qualified business notwithstanding any failure to satisfy

sub. (1). *or s. 560.34 (1)(f)*

SECTION 18. 560.34 (1) (c) of the statutes is amended to read:

560.34 (1) (c) As a condition of the investment, the qualified business agrees, as long as the certified capital corporation company continues to hold the investment, not to relocate its headquarters out of this state.

SECTION 19. 560.34 (1) (d) of the statutes is renumbered 560.34 (1) (d) (intro.) and amended to read:

560.34 (1) (d) (intro.) As a condition of the investment, the qualified business agrees, as long as the certified capital corporation company continues to hold the investment, to maintain do any of the following:

or at work sites that are no more than  
25 miles from the place where the headquarters or principal business  
operations of the qualified business are located at the time of the investment

1. Maintain at least 75% of its employees in this state.

SECTION ~~20~~ 560.34 (1) (d) 2. of the statutes is created to read:

560.34 (1) (d) 2. Pay at least 75% of its total payroll to employees who are employed in this state.

SECTION ~~21~~ 560.34 (1) (e) of the statutes is amended to read:

560.34 (1) (e) As a condition of the investment, the qualified business agrees, as long as the certified capital corporation company continues to hold the investment, to maintain at least 75% of its employees at work sites that were maintained by the qualified business at the time that the investment was made, unless the qualified business obtains an exemption from the department under this paragraph. The department may grant an exemption unless it determines that the qualified business is locating the employees at new sites to take advantage of lower wage rates in the areas where the new sites are located.

SECTION ~~22~~ 560.34 (1m) (b) of the statutes is amended to read:

560.34 (1m) (b) The proceeds of all capital of a qualified investment returned to a certified capital company by a qualified business may be placed in new qualified investments, which shall count toward the percentage requirements under par. (a) and s. 560.36 ~~(3)~~ <sup>(1)(c)</sup>. The department shall promulgate rules governing the extent to which a reinvestment of proceeds from the sale of a qualified investment in a qualified business may be counted toward the percentage requirements under par. (a) and ss. 560.36 ~~(3)~~ <sup>(1)(c)</sup> and 560.37 (3m) (a) 2. These rules may provide that reinvested proceeds from the sale of short-term investments shall be only partially counted toward the percentage requirements under par. (a) and ss. 560.36 ~~(3)~~ <sup>(1)(c)</sup> and 560.37 (3m) (a) 2. The rules may also provide that proceeds from the sale of an investment in a qualified business that are reinvested in that qualified business, or an affiliate of

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## SECTION 22

1 that qualified business, shall be only partially counted toward the percentage  
2 requirements under par. (a) and ss. 560.36 <sup>(1) (c)</sup> ~~(3)~~ and 560.37 (3m) (a) 2.

3 SECTION ~~23~~ <sup>#</sup> 560.34 (2) of the statutes is renumbered 560.34 (2) (intro.) and  
4 amended to read:

5 560.34 (2) (intro.) NONQUALIFIED INVESTMENTS. All certified capital investments  
6 in a certified capital company that are not invested in qualified investments may be  
7 held or invested by the certified capital company ~~as it considers appropriate, except~~  
8 ~~that a certified capital company may not invest certified capital investments in an~~  
9 ~~insurance company or in an affiliate of an insurance company. only in any of the~~  
10 following:

11 SECTION ~~24~~ <sup>#</sup> 560.34 (2) (a) to (k) of the statutes are created to read:

12 560.34 (2) (a) Deposits with a federally insured financial institution, as defined  
13 in s. 705.01 (3).

14 (b) Certificates of deposit in a federally insured financial institution, as defined  
15 in s. 705.01 (3).

16 (c) Investment securities that are obligations of the United States or its  
17 agencies or instrumentalities, or that are obligations that are guaranteed fully as to  
18 principal and interest by the United States.

19 (d) Commercial paper rated at least "A1," "P1," or the equivalent, by a  
20 nationally recognized credit rating organization.

21 (e) Debt instruments rated at least "AA" or its equivalent by a nationally  
22 recognized credit rating organization.

23 (f) Debt instruments issued by, or guaranteed with respect to payment by, an  
24 entity whose unsecured indebtedness is rated at least "AA" or its equivalent by a

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1 nationally recognized credit rating organization and which are not subordinated to  
2 other unsecured indebtedness of the issuer or guarantor, as applicable.

3 (g) Swaps, ~~other hedging transactions~~ designed to realize or protect the value  
4 of a qualified investment, if the counterparty is rated at least "A" or its equivalent  
5 by a nationally recognized credit rating organization.

6 (h) Obligations of the state or any political subdivision of the state.

7 (i) Interests in money market or other mutual funds, the portfolios of which are  
8 limited to cash and other permissible investments described in this subsection.

9 (j) A small business investment company that is approved by the department.

10 (k) Any other investments approved in advance in writing by the department.

11 SECTION ~~24~~ 560.34 (5) of the statutes is created to read:

12 560.34 (5) QUALIFIED INVESTMENT BECOMING NONQUALIFIED. (a) If a certified  
13 capital company makes an investment in a qualified business and, after the effective  
14 date of this paragraph .... [revisor inserts date], and during the time that the certified

15 capital company still holds the investment, the qualified business violates an  
16 agreement made under sub. (1) (b) to (e), all of the following apply:

17 1. The violation does not affect the certified capital company's satisfaction of  
18 the percentage requirements under sub. (1m) (a) 1. or 2., and 100% of the amount of  
19 the qualified investment shall be counted toward the certified capital company's  
20 satisfaction of those percentage requirements.

21 2. If the violation occurs within the first year after the qualified investment was  
22 made, no amount of the qualified investment shall be counted toward the certified  
23 capital company's satisfaction of the percentage requirements under ss. 560.36 (3)  
24 and 560.37 (3m) (a).

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1           3. If the violation occurs more than one year, but 3 years or less, after the  
2 qualified investment was made, only 25% of the amount of the qualified investment  
3 shall be counted toward the certified capital company's satisfaction of the percentage  
4 requirements under ss. 560.36 (3) and 560.37 (3m) (a).

5           4. If the violation occurs more than 3 years, but 5 years or less, after the  
6 qualified investment was made, only 50% of the amount of the qualified investment  
7 shall be counted toward the certified capital company's satisfaction of the percentage  
8 requirements under ss. 560.36 (3) and 560.37 (3m) (a).

9           5. If the violation occurs more than 5 years after the qualified investment was  
10 made, 90% of the amount of the qualified investment shall be counted toward the  
11 certified capital company's satisfaction of the percentage requirements under ss.  
12 560.36 (3) and 560.37 (3m) (a).

13           (b) Notwithstanding par. (a), if a qualified business violates an agreement  
14 under sub. (1) (b), (c), (d), or (e), the department may grant an exception to the  
15 requirements under par. (a) 2. to 5. and not reduce the amount of the qualified  
16 investment that is counted toward the certified capital company's satisfaction of the  
17 percentage requirements under ss. 560.36 (3) and 560.37 (3m) (a), unless the  
18 department determines that the qualified business is locating employees at new sites  
19 to take advantage of lower wage rates in the areas where those sites are located.

20           ~~SECTION 26.~~ 560.35 (1c) of the statutes is created to read:

21           560.35 (1c) QUALIFIED INVESTMENTS. Within 15 days after making a qualified  
22 investment, a certified capital company shall report all of the following to the  
23 department:

24           (a) The name of the qualified business in which the qualified investment was  
25 made.

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1 (b) The amount of the qualified investment.

2 (c) The type of investment, as specified in s. 560.34 (1) (a) 1. or 2. a. or b.

3 ~~SECTION 27.~~ 560.35 (1r) of the statutes is created to read:

4 560.35 (1r) QUALIFIED INVESTMENT SCHEDULE REPORT. Within 30 days after the  
5 conclusion of each time period specified in s. 560.34 (1m) (a), a certified capital  
6 company shall report to the department, in the format and substance prescribed by  
7 the department, information required by the department for determining whether  
8 the certified capital company is in compliance with the percentage requirements  
9 under s. 560.34 (1m) (a).

10 ~~SECTION 28.~~ 560.35 (2) (intro.) of the statutes is amended to read:

11 560.35 (2) ~~ANNUAL~~ SEMIANNUAL REPORTS. (intro.) On Each year, on or before  
12 January 31 annually, for the preceding 6-month period ending on December 31, and  
13 on or before July 31, for the preceding 6-month period ending on June 30, a certified  
14 capital company shall report, in the format and substance prescribed by the  
15 department, all of the following to the department:

16 ~~SECTION 29.~~ 560.35 (2) (a) of the statutes is amended to read:

17 560.35 (2) (a) The amount of the certified capital company's certified capital at  
18 the end of the preceding year 6-month period.

19 ~~SECTION 30.~~ 560.35 (2) (c) of the statutes is amended to read:

20 560.35 (2) (c) All qualified investments that the certified capital company has  
21 made during the ~~previous calendar year~~ preceding 6-month period and the  
22 investment pool from which each qualified investment was made.

23 ~~SECTION 31.~~ 560.35 (3) of the statutes is amended to read:

24 560.35 (3) FINANCIAL STATEMENTS. Within 90 days of the end of the certified  
25 capital company's fiscal year, the certified capital company shall provide to the

## ASSEMBLY BILL 531

## SECTION 31

1 department a copy of its annual audited financial statements, including the opinion  
2 of an independent certified public accountant, and a copy of a report on agreed-upon  
3 procedures prepared by an independent certified public accountant. The ~~audit shall~~  
4 ~~address agreed-upon-procedures report shall identify the procedures performed by~~  
5 ~~the certified capital company, as prescribed by the department, that relate to the~~  
6 methods of operation and conduct of the business of the certified capital company to  
7 enable the department to determine whether the certified capital company is  
8 complying with this subchapter and the rules promulgated under this subchapter,  
9 including whether certified capital has been invested in the manner required under  
10 s. 560.34. The financial statements and agreed-upon-procedures report provided  
11 under this subsection shall be segregated by investment pool ~~and shall be separately~~  
12 ~~audited on that basis to allow the department to determine whether the certified~~  
13 capital company is in compliance with s. 560.34 (1m) this subchapter and the rules  
14 promulgated under this subchapter.

15 SECTION ~~32~~ 560.37 (3m) (a) (intro.) and 2. of the statutes are consolidated,  
16 renumbered 560.37 (3m) (a) and amended to read:

17 560.37 (3m) (a) A certified capital company may voluntary decertify itself as  
18 a certified capital company ~~if any of the following conditions are met: 2. The only~~  
19 ~~if the~~ certified capital company has placed in qualified investments an amount equal  
20 to 100% of the certified capital investment in the certified capital company.

21 SECTION ~~33~~ 560.37 (3m) (a) 1. of the statutes is repealed.

22 SECTION ~~34~~ 560.37 (4) of the statutes is amended to read:

23 560.37 (4) EFFECT OF DECERTIFICATION. Decertification of a certified capital  
24 company or an investment pool has the effects specified in s. ss. 71.47 (7) (d) and  
25 76.635 (4).



## ASSEMBLY BILL 531

1        ~~SECTION 35.~~ 560.37 (5) of the statutes is amended to read:

2        560.37 (5) NOTICES TO CERTIFIED INVESTORS. The department shall notify a  
3        certified investor when the certified capital company tax credit arising from a  
4        certified investment is no longer subject to recapture and forfeiture under ~~s.~~ ss. 71.47  
5        (7) (d) and 76.635 (4).

6        ~~SECTION 36.~~ **Nonstatutory provisions.**

7        (1) PERFORMANCE EVALUATION AUDIT. The joint legislative audit committee is  
8        requested to, and may, direct the legislative audit bureau to perform a performance  
9        evaluation audit of the program under subchapter II of chapter 560 of the statutes,  
10       which shall include evaluating the overall effectiveness of the program. If the  
11       committee directs the legislative audit bureau to perform an audit under this  
12       subsection, the bureau shall file its report as described in section 13.94 (1) (b) of the  
13       statutes by January 1, 2005.

14       ~~SECTION 37.~~ **Initial applicability.**

15       (1) The treatment of sections 71.45 (2) (a) 10., 71.47 (7), 71.49 (1) (dm), 560.30  
16       (3), and 560.37 (4) and (5) of the statutes first applies to taxable years beginning on  
17       July 1, 2005.

18       (2) The treatment of sections 560.31 (2) (b) and (g) of the statutes, the  
19       renumbering and amendment of sections 560.33 (1) (b) and 560.34 (1) (d) and (2) of  
20       the statutes, and the creation of sections 560.33 (1) (b) 2. and 560.34 (1) (d) 2. and (2)  
21       (a) to (h) of the statutes first apply to certified capital companies for which certified  
22       capital investments are first certified, and to certified capital investments that are  
23       first certified, on the effective date of this subsection.

24       (END)

O-Note

**SENATE AMENDMENT ,  
TO 2003 SENATE BILL 249**

INSERTS

At the locations indicated, amend the bill as follows:

INSERT  
7-21B

1. Page 7, line 21: after that line insert.

SECTION 560.30 (9) of the statutes is renumbered 560.30 (9) (intro.) and amended to read:

560.30 (9) (intro.) "Qualified debt instrument" means a debt instrument that a certified capital company issues at par value or at a premium; ~~that has and that~~ satisfies all of the following criteria:

(a) The debt instrument has an original maturity date of at least 5 years from the date on which it was issued; ~~that,~~

(b) The debt instrument has a repayment schedule that is no faster than a level principal amortization ~~and, until~~ over 5 years.

(c) Until the certified capital company may make distributions other than qualified distributions, the interest, distribution or payment features of ~~which the~~

1 debt instrument are not related to the certified capital company's profitability or the  
2 performance of its investment portfolio.

3 ~~SECTION 11~~ 560.30 (9) (d) of the statutes is created to read:

4 560.30 (9) (d) The debt instrument does not permit the certified investor to  
5 receive prepayment of interest.

6 2. Page 8, line 21: after "investments" insert "until all investment pools have  
7 been decertified" *(and ins)*

8 *INSERT 9-5*  
9 3. Page 9, line 6: delete lines 6 and 7 and substitute "received under par. (a),  
10 subject to the limit specified in this subdivision. The department may certify an  
11 investment under this subdivision only if, after the certification, the department will  
12 not have certified a total of more than \$300,000,000 in investments under this  
subdivision."

13 *INSERT 9-14*  
14 4. Page 9, line 14: after that line insert:

15 ~~SECTION 13g~~ 560.32 (3) of the statutes is renumbered 560.32 (3) (a) and  
16 amended to read:

17 560.32 (3) (a) A certified investor may not, individually, or with or through one  
18 or more affiliates, own 10% or more of the equity securities in, be a general partner  
19 or manager of, or otherwise control the investments of the certified capital company.  
20 This subsection paragraph does not preclude ~~a certified investor~~ any person from  
21 exercising its legal rights and remedies, including interim management of a certified  
22 capital company, in the event that a certified capital company is in default of its  
23 statutory or contractual obligations to ~~the certified investor~~ that or any other person.  
24 This paragraph does not preclude any person from establishing controls to ensure  
that a certified capital company satisfies the requirements of s. 560.34 (1m).

SECTION ~~13j~~. 560.32 (3) (b) of the statutes is created to read:

560.32 (3) (b) A certified capital company may obtain <sup>from any business entity</sup> a guaranty, indemnity, bond, insurance policy, or other payment undertaking for the benefit of its certified investors, except that no more than one of the certified investors of the certified capital company <sup>or affiliate of such a certified investor,</sup> may provide such guaranty, indemnity, bond, insurance policy, or other payment undertaking. <sup>Lead into</sup>

<sup>INSERT 13-12</sup> 5. Page 13, line 13: delete lines 13 and 14 and substitute capital company makes an investment authorized under s. 560.32 (2) (b) 2. in a qualified business and during the time that the certified

<sup>INSERT 17-13</sup> 6. Page 17, line 13: after that line insert.

NS: Sub ~~2j~~ (2) EXISTING CONTRACTS.

NS: ~~2j~~ (2) Definitions. In this subsection,

1. "Certified capital company" has the meaning given in section 560.30 (2) of the statutes.

2. "Certified capital investment" has the meaning given in section 560.30 (4) of the statutes.

3. "Covered contract" means a contract that is in effect on the effective date of this subdivision and that pertains to a certified capital investment or qualified investment made before the effective date of this subdivision.

4. "Qualified investment" has the meaning given in section 560.30 (11) of the statutes.

NS: <sup>for</sup> (2) Effect on covered contracts. If a certified capital company is party to a covered contract that <sup>is in effect on the effective date of this paragraph and that</sup> contains provisions that are inconsistent with sections 560.30 (9), and (10) (d) and (e), 560.33 (1) (b) (intro.) and 2., 560.34 (1) (c), (d) (intro.) and 2.,

use twice

~~subchapter II of chapter 560~~

1 ~~and (e), (1m) (b), and (2) (intro.) and (a) to (k), 560.35 (1c), (1r), (2) (a) and (c), and (3),~~  
 2 ~~and 560.37 (3m) (a) of the statutes, as affected by this act,~~ <sup>skt - leave this in</sup> but that are not  
 3 inconsistent with any applicable law in effect immediately before the effective date  
 4 of this paragraph, then, notwithstanding ~~sections 560.30 (9), and (10) (d) and (e),~~  
 5 ~~560.31 (1), 560.32 (2) (b) 1., 560.33 (1) (b) (intro.) and 2. and (2), 560.34 (1) (e), (d)~~  
 6 ~~(intro.) and 2., and (e), (1m) (b), and (2) (intro.) and (a) to (k), 560.35 (1c), (1r), (2) (a)~~  
 7 ~~and (c), (3), and 560.37 (3m) (a) of the statutes, as affected by this act,~~ <sup>skt - leave in</sup> the parties to  
 8 the contract may perform their obligations, and exercise their rights, under those  
 9 provisions of the contract until the contract expires or is extended, modified, or  
 10 renewed, whichever occurs first. <sup>(end ins)</sup>

11 ~~7. Page 17, line 18: delete lines 18 to 23 and substitute.~~

12 <sup>10564</sup>  
 13 <sup>17-17</sup> SECTION 38m. **Effective dates.** This act takes effect on the day after  
 14 publication, except as follows:

15 ~~RETROACTIVE EFFECT.~~ RETROACTIVE EFFECT. The renumbering and amendment of section 560.32  
 16 (3) of the statutes and the creation of section 560.32 (3) (b) of the statutes take effect  
 17 retroactively to May 13, 1998. <sup>(END)</sup>

2003-2004 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRBs0231/insRM  
RJM:.....  
PI

INSERT 7-21 A

SECTION ~~1~~<sup>#</sup> 560.30 (5g) of the statutes is created to read:

560.30 (5g) "Early stage business" means a qualified business that satisfies any of the following criteria:

(a) At the time that a certified capital company makes an initial investment in the business, the business is involved in activities related to prototype development, establishment of initial production or service processes, or other development of initial product or service offerings.

(b) During the fiscal year preceding the year in which a certified capital company makes an initial investment in the business, the business had gross revenues of less than \$2,000,000, on a consolidated basis, as determined in accordance with generally accepted accounting principles.

(c) The business is approved as an early stage business by the department under s. 560.33 (2).

SECTION ~~2~~<sup>#</sup> 560.30 (5r) of the statutes is created to read:

560.30 (5r) "Investment criteria" means the investment criteria submitted to the department under s. 560.31 (2) (j), or any investment criteria subsequently approved as provided under the rules of the department.

INSERT 7-21 C

SECTION ~~3~~<sup>#</sup> 560.30 (10) (intro.) of the statutes is amended to read:

560.30 (10) (intro.) "Qualified distribution" means a distribution or payment by a certified capital company to its equity holders for any of the following:

History: 1997 a. 215.

SECTION ~~4~~<sup>#</sup> 560.30 (10) (a) of the statutes is amended to read:

560.30 (10) (a) The costs of forming, and ~~syndicating, managing or operating~~ the certified capital company.

History: 1997 a. 215.

~~SECTION 5~~ 560.30 (10) (b) of the statutes is amended to read:

560.30 (10) (b) An annual management fee that does not exceed 2.5% of the certified capital company's total certified capital or the cost of managing and operating the certified capital company, whichever is less.

History: 1997 a. 215.

~~SECTION 5~~ 560.30 (10) (c) of the statutes is repealed.

INSERT 8-14

A person may submit an amended application within 15 days of receipt of a notice of denial. The department shall grant or deny the amended application within 15 days of the date of the amended application. If the department denies certification based upon the amended application, the department shall include with the denial a detailed description of the grounds for the refusal. A person whose amended application is denied may, within 10 days after the department's decision, request a contested case hearing under s. 227.42 from the department. If the final administrative or judicial proceeding results in a determination that the application was denied in error, the department shall revise its determination accordingly.

INSERT 8-21

~~SECTION 7~~ 560.31 (2) (h) of the statutes is created to read:

560.31 (2) (h) The person has provided the department with a list of all persons that have an ownership interest in the person as provided under this paragraph. The list shall include the percentage ownership interest of each owner and indicate whether the interest is voting or non<sup>✓</sup>voting. If the person is an entity that is registered with the U.S. Securities and Exchange Commission under 15 USC 781 (g)

or 78o (d), the person shall list only those persons having beneficial ownership of equity securities of at least 50 percent. If a list contains the name of a business entity, the person shall also include a list of all persons that have an ownership interest in the entity. X

~~SECTION 9~~ 560.31 (2) (i) of the statutes is created to read:

560.31 (2) (i) The person has provided the department with a business plan covering at least the 5-year period following the date of application.

~~SECTION 9~~ 560.31 (2) (j) of the statutes is created to read:

560.31 (2) (j) The person has provided the department with the person's investment strategy, along with a description of the investment criteria the person intends to follow.

~~SECTION 10~~ 560.31 (2) (k) of the statutes is created to read:

560.31 (2) (k) The person has provided the department with the person's organizational chart.

INSERT 9-20

~~SECTION 11~~ 560.33 (1) (a) of the statutes is amended to read:

560.33 (1) (a) The business is headquartered in this state and its principal business operations are located in this state or the business commits to relocate its headquarters and its principal business operations to this state within 90 days after the date on which the certified capital company makes its first investment in the business.

History: 1997 a. 215.

INSERT 10-3

~~SECTION 12~~ 560.33 (1) (e) of the statutes is amended to read:



560.33 (1) (e) The business is not predominantly engaged in professional services provided by accountants, business consultants, lawyers, or physicians.

History: 1997 a. 215.

~~SECTION 13.~~ 560.33 (1) (g) of the statutes is amended to read:

560.33 (1) (g) The business is not engaged in banking ~~or~~, lending, lobbying, or political consulting and does not make any loans to, or investments in, certified capital companies.

History: 1997 a. 215.

~~SECTION 14.~~ 560.33 (1) (h) of the statutes is created to read:

560.33 (1) (h) The business is not predominantly engaged in retail sales, unless the business is approved by the department under sub. (2).

~~SECTION 15.~~ 560.33 (1) (i) of the statutes is created to read:

560.33 (1) (i) The business was not organized by a certified capital company or an affiliate of a certified capital company. This paragraph does not prohibit a certified capital company from providing financial, technical, or similar advice to a business before making an investment in the business.

~~SECTION 16.~~ 560.33 (1) (j) of the statutes is created to read:

560.33 (1) (j) The business is engaged in at least one of the following activities:

1. Manufacturing, processing, or assembling products.
2. Providing services, unless the services are of such a nature that the department disapproves of the business under sub. (2).
3. Conducting research and development.
4. Conducting any other business that is not excluded under this subsection and that is approved by the department under sub. (2).

~~SECTION 17.~~ 560.33 (1) (k) of the statutes is created to read:

560.33 (1) (k) The business does not have a financial relationship with a certified capital company or any affiliate of a certified capital company before the date on which the certified capital company makes its first investment in the business, unless the business is approved under sub. (2) notwithstanding such a financial relationship. This paragraph does not prohibit a certified capital company from providing financial advice to a business before making an investment in the business.

INSERT 10-16

~~SECTION 18.~~ 560.33 (2) (b) and (c) of the statutes are created to read:

560.33 (2) (b) During the 15 business day period established under par. (a), the department may make a determination that a business is a qualified business, notwithstanding any failure to satisfy sub. (1), if the certified capital company's proposed investment in the business will further the goals of this subchapter.

(c) If the department determines that a proposed investment is not consistent with a certified capital company's investment criteria, the certified capital company may, within 10 days after the department's decision, request a contested case hearing under s. 227.42 from the department. If the final administrative or judicial proceeding results in a determination that the investment is consistent, the department shall issue a redetermination accordingly.

~~SECTION 19.~~ 560.34 (1) (a) 1. of the statutes is amended to read:

560.34 (1) (a) 1. ~~An equity security~~ Except as otherwise provided in this subdivision, equity securities or options, warrants, or other equity participation instruments of the qualified business, unless the certified capital company, after the investment and assuming full conversion and exercise of any equity participation

instrument, owns more than 50% of the voting equity of the qualified business. The department may grant an exception to this percentage limitation under s. 560.33 (2).

History: 1997 a. 215.

~~SECTION 20.~~ <sup>#</sup> 560.34 (1) (b) of the statutes is amended to read:

560.34 (1) (b) As a condition of the investment, the qualified business agrees not to use the proceeds from the investment for the purpose of relocating its operations other than to this state.

History: 1997 a. 215.

~~SECTION 21.~~ <sup>#</sup> 560.34 (1) (a) 2. a. of the statutes is amended to read:

560.34 (1) (a) 2. a. The debt is ~~unsecured~~ not secured by a first priority lien on any of the assets of the qualified business at the <sup>time</sup> of the certified capital company's qualified investment in the qualified business.

History: 1997 a. 215.

~~SECTION 22.~~ <sup>#</sup> 560.34 (1) (a) 2. b. of the statutes is amended to read:

560.34 (1) (a) 2. b. The Except as otherwise provided in this <sup>subd. 2. b.</sup> subdivision ~~paragraph~~, the debt is convertible into equity securities or options, warrants or other equity participation instruments such as options or warrants or has attached equity participation rights, unless the debt and the equity participation instruments, if fully converted and exercised, would result in the certified capital company owning more than 50% of the voting equity of the qualified business. The department may grant an exception to this percentage limitation under s. 560.33 (2).

INSERT 11-13

~~SECTION 23.~~ <sup>#</sup> 560.34 (1) (f) of the statutes is created to read:

560.34 (1) (f) The investment is consistent with the certified capital company's investment criteria.

~~SECTION 24.~~ <sup>4</sup> 560.34 (1m) (a) 2. of the statutes is renumbered 560.34 (1m) (a) 2. a. and amended to read:

560.34 (1m) (a) 2. a. ~~Within~~ With respect to a certified capital company that receives certified capital investments under s. 560.32 (2) (b) 1., within 5 years after the investment date for a particular investment pool, at least 50% of the investment pool shall be placed in qualified investments.

History: 1997 a. 215.

~~SECTION 25.~~ <sup>4</sup> 560.34 (1m) (a) 2. b. of the statutes is created to read:

560.34 (1m) (a) 2. b. With respect to a certified capital company that receives certified capital investments under s. 560.32 (2) (b) <sup>✓</sup>2., within 5 years after the investment date for a particular investment pool, at least 50% of the investment pool shall be placed in qualified investments and, of such 50%, at least 50% shall be placed in qualified investments in early stage businesses.

INSERT 16-14

~~SECTION 26.~~ <sup>4</sup> 560.36 (intro.) of the statutes is renumbered 560.36 (1) (intro.) and amended to read:

560.36 (1) (intro.) <sup>✓</sup>~~A~~ Except as provided in sub. (2), a certified capital company <sup>✓</sup>~~may~~ make a distribution only if one of the following conditions is met: X

History: 1997 a. 215.

~~SECTION 27.~~ <sup>4</sup> 560.36 (1) to (4) of the statutes are renumbered 560.36 (1) (a) to (d) and ~~section~~ 560.36 (1) (c), as renumbered, is amended to read: X

560.36 (1) (c) *Placement of 100% of investments in qualified investments.* The certified capital company has placed in qualified investments an amount equal to 100% of the certified capital investments in the investment pool and at least 60% of the total amount of such investments purchased equity securities; options, warrants,

or other equity participation instruments; or debt that is convertible into equity securities or options, warrants, or other equity participation instruments.

History: 1997 a. 215.

~~SECTION 28~~ 560.36 (2) of the statutes is created to read:

560.36 (2) STATE PARTICIPATION. (a) In this subsection:

1. "Applicable distribution" means a distribution by a certified capital company to its equity holders, except that ~~"Applicable distribution"~~ does not include a qualified distribution; payment of principal or interest owed to a debt holder, even if the debt holder is a holder of equity and even if the indebtedness is a certified capital investment; or return of the initial \$500,000 equity contribution and any other equity contribution.

2. "Specified return" means the internal rate of return on the total amount of certified capital investments received by a certified capital company and on additional contributions received by the certified capital company.

(b) If a certified capital company makes an applicable distribution after having made distributions that would result in a specified return of 10%, the certified capital company shall pay to the department, for deposit in the general fund, an amount equal to 20% of the applicable distribution.

**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRBs0231/1dn

RJM: [signature]

Date

Representative Ward:

Attached is the substitute amendment you requested concerning the CAPCO program. In some cases, the language submitted to me was not entirely clear. As a result, it is important that the amendment be reviewed to ensure that all desired items are included and that they are drafted in a way that accomplishes your intent. In particular, as you review the draft, please note the following issues:

1. Please review proposed s. 560.30 (10) (b). I drafted the language to more clearly express my understanding of your intent.
2. I deleted language that appeared unnecessary from proposed s. 560.32 (3) (b).
3. I deleted duplicative language in proposed s. 560.33 (1) (i).
4. I clarified proposed s. 560.33 (1) (j) 2. Please review.
5. Proposed s. 560.31 (2) (h) includes a reference to entities "registered" under 15 USC 78o(d) (which is Section 15(d) of the Securities and Exchange Act of 1934). However, that federal statute requires reporting, not registration.
6. In proposed s. 560.31 (2) (j), I did not include any reference to the department's reasonable discretion. The language appears to be unnecessary.
7. Please review proposed s. 560.33 (1) (k). In addition to clarifying the language and stating it in a more uniform fashion, I added language expressly allowing a CAPCO to provide financial advice.
8. Please review proposed s. 560.33 (2) (b) and (c). They are significantly reworded. Per my phone conversation with Char, I did not include any reference to a preamble. I also did not copy the suggested preamble language (among other things, the language referred to "providing resources in the form of capital," which would seem to apply to most, if not all, proposed CAPCO investments). Rather, the draft allows Commerce to make an exception if it determines that the proposed investment furthers the goals of the CAPCO subchapter.
9. I added proposed s. 560.34 (1) (f) because it was apparent that, under the revisions in this amendment, a CAPCO must make investments that are consistent with its investment criteria (unless Commerce grants an exception).

10. I revised the nonstatutory provision to grandfather any existing CAPCO contract that contains provisions inconsistent with the amendments to subch. II of ch. 560 achieved by the draft. Under the nonstatutory provision, the amendments to subch. II of ch. 560 have no impact upon any such contract (unless the contract is in violation of current law). This language accomplishes my understanding of the intent, which is to ensure that the contractual relationships of <sup>Δ</sup>“program 1” CAPCO’s are not effected by the draft. X

The submitted language regarding this issue was problematic and could not be timely drafted. In effect, it would have required every statute treated by the draft to be drafted twice <sup>endash</sup> <sup>Δ</sup>once with the language applicable to “program 1” CAPCO’s and once with the language applicable to “program 2” CAPCO’s. Please let me know if the nonstatutory provision does not address your concerns. X

If you have any questions, please feel free to call.

Robert J. Marchant  
Legislative Attorney  
Phone: (608) 261-4454  
E-mail: robert.marchant@legis.state.wi.us

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRBs0231/P1dn  
RJM:kjf:ch

October 24, 2003

Representative Ward:

Attached is the substitute amendment you requested concerning the CAPCO program. In some cases, the language submitted to me was not entirely clear. As a result, it is important that the amendment be reviewed to ensure that all desired items are included and that they are drafted in a way that accomplishes your intent. In particular, as you review the draft, please note the following issues:

1. Please review proposed s. 560.30 (10) (b). I drafted the language to more clearly express my understanding of your intent.
2. I deleted language that appeared unnecessary from proposed s. 560.32 (3) (b).
3. I deleted duplicative language in proposed s. 560.33 (1) (i).
4. I clarified proposed s. 560.33 (1) (j) 2. Please review.
5. Proposed s. 560.31 (2) (h) includes a reference to entities "registered" under 15 USC 78o (d) (which is Section 15(d) of the Securities and Exchange Act of 1934). However, that federal statute requires reporting, not registration.
6. In proposed s. 560.31 (2) (j), I did not include any reference to the department's reasonable discretion. The language appears to be unnecessary.
7. Please review proposed s. 560.33 (1) (k). In addition to clarifying the language and stating it in a more uniform fashion, I added language expressly allowing a CAPCO to provide financial advice.
8. Please review proposed s. 560.33 (2) (b) and (c). They are significantly reworded. Per my phone conversation with Char, I did not include any reference to a preamble. I also did not copy the suggested preamble language (among other things, the language referred to "providing resources in the form of capital," which would seem to apply to most, if not all, proposed CAPCO investments). Rather, the draft allows Commerce to make an exception if it determines that the proposed investment furthers the goals of the CAPCO subchapter.
9. I added proposed s. 560.34 (1) (f) because it was apparent that, under the revisions in this amendment, a CAPCO must make investments that are consistent with its investment criteria (unless Commerce grants an exception).



10. I revised the nonstatutory provision to grandfather any existing CAPCO contract that contains provisions inconsistent with the amendments to subch. II of ch. 560 achieved by the draft. Under the nonstatutory provision, the amendments to subch. II of ch. 560 have no impact upon any such contract (unless the contract is in violation of current law). This language accomplishes my understanding of the intent, which is to ensure that the contractual relationships of "program 1" CAPCO's are not effected by the draft.

The submitted language regarding this issue was problematic and could not be timely drafted. In effect, it would have required every statute treated by the draft to be drafted twice — once with the language applicable to "program 1" CAPCO's and once with the language applicable to "program 2" CAPCO's. Please let me know if the nonstatutory provision does not address your concerns.

If you have any questions, please feel free to call.

Robert J. Marchant  
Legislative Attorney  
Phone: (608) 261-4454  
E-mail: robert.marchant@legis.state.wi.us